

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

1998 Biennial Regulatory Review)

CS Docket No. 98-61

"Annual Report of Cable Television
System", Form 325, filed pursuant to
Section 76.403 of the Commission's
Rules)

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION

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COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION

The National Cable Television Association ("NCTA"), by its attorneys, submits the following comments in support of the Commission's proposal to eliminate the requirement that cable systems file Form 325 annually as required by Section 76.403 of the Commission's Rules.

INTRODUCTION AND SUMMARY

Form 325 is an outmoded requirement from a long past era. It was first adopted on a one-time basis in 1966 at the very beginning of federal cable regulation. The Commission was in the process of developing a comprehensive scheme for regulating the cable industry. Beginning in 1971, as part of the comprehensive cable regulations imposed at that time, the FCC required annual submission of Form 325 to carefully track the development of cable throughout the United States.

The reasons the Commission identifies for potentially maintaining the regulations no longer exist:

- The form was intended to provide basic information that could prove useful in the development of cable regulations. But the initial stages of regulatory development have long past, and the Commission does not need the form to implement existing or future rules.
- Form 325 data on system characteristics was deemed useful in individual system waiver and enforcement proceedings. This information can be obtained in the course of individual proceedings. It is highly inefficient to collect information on all systems to accommodate the relatively few situations involving waivers and enforcement.
- Form 325 has been used to calculate or review annual cable regulatory fee payments. But the Commission no longer relies upon Form 325 for this purpose.
- Form 325 data might assist the Commission is protecting against signal leakage and interference. But the information derived from Form 320 satisfies this need.

The case for eliminating Form 325 is made all the more persuasive by the fact that the Commission has not collected the data for several years.

The Notice recognizes that key information required in Form 325 is available from commercial sources. Warren Publishing and A.C. Nielsen collect system-specific data on miles of plant, homes passed and number of subscribers, channel capacity, channels in use, tiers of service, pricing and other key factors. The information is updated frequently.

Moreover, the Commission has alternative means to obtain necessary information. The Form 320 Basic Signal Leakage Performance Report provides data on operational parameters for all cable systems and tracks potential interference to over-the-air services. In addition, where necessary the Commission has the authority to seek information in support of its regulatory activities.

Failure to eliminate Form 325 will impose a significant burden on the cable industry. It will force 11,000 cable systems, large and small, to devote scarce resources to comply even

though it is not clear that the information, once collected, will be used. The Commission should limit regulatory requirement to targeted requests that serve identified purposes.

Finally, the Commission should eliminate Form 325, not reform it. The minimal value of the information collected on Form 325 and the availability of the information through alternative sources makes a persuasive case for elimination. There are no demonstrable benefits of a continued, broad-based data gathering effort, even in a modified, reduced form.

I. THE ANNUAL SUBMISSION OF FORM 325 SERVES NO IDENTIFIABLE REGULATORY OR POLICY PURPOSE

A. Form 325 is a Regulatory Relic of a Bygone Era

The Commission, as part of the Biennial Review of regulations mandated by the 1996 Telecommunications Act, has chosen to reexamine other regulations that have been in place for many years. Form 325 has been identified through this process as an excellent candidate for regulatory elimination.

Form 325 was first required on a one-time basis in 1966 as a mechanism to identify certain basic information about every cable system operating in the United States. At the time, the Commission was adopting mandatory broadcast signal carriage regulations. The Commission noted that there was “no comprehensive or accurate listing of CATV systems available to apprise television station licensees or permittees of all existing CATV operations within their grade B contours.”¹ The Commission observed that “while the recent growth of CATV is of an impressive nature, there are conflicting estimates of the precise dimensions of that very

¹ Amendment of SubPart L, Part 91, to Adopt Rules and Regulations to Govern the Grant of Authorizations in the Business Radio Service for Microwave Stations to Relay Television Signals to Community Antenna Systems, 2 F.C.C. 2d 725, 765 (1966). Since 1993, the FCC has required cable systems, pursuant to the must carry rules, to notify broadcasters of signal carriage. See, 47 C.F.R. §76.58.

substantial growth.”² Form 325 data enabled the Commission to more accurately assess the dimensions of cable growth.

In 1971, the Commission made Form 325 an annual filing requirement. It directed all cable systems to file information on such matters as system location, number of subscribers, channel capacity, broadcast signals carried, extent of program origination, financial data and interests held by the operator in other cable systems and broadcast media.³ The information obtained in Form 325 was sought “to make possible further informed regulatory judgments.”⁴

The current version of Form 325 provides information in four parts. Part 1 calls for the operator’s name, address and tax identification number for each franchised community served. The second part requests population, potential and actual number of subscribers, cable plant length and date of service commencement. Part 3 asks for frequency and signal distribution information. Finally, Part 4 requests information on local programming and ancillary services.

The Commission identifies four purposes that have been served by the filing of the form. First, Form 325 was intended to provide information that would be of value in the development of cable regulations and policies. That initial purpose has now been served. And, despite considerable cable regulatory activity in recent years, there is no evidence Form 325 information has been relied upon, or that it serves any current purpose.

Second, the information was expected to be of value in individual waiver and enforcement proceedings. Instead of collecting information from every system, however, the

² Id.

³ Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals, 32 F.C.C. 2d 13 (1971).

Commission should assess these individual cases as they arise by obtaining system-specific information in individual cases. This targeted approach will avoid the gathering of vast quantities of information associated with systems uninvolved in waivers or enforcement proceeding.

Third, Form 325 data have been used to calculate or review cable operator annual regulatory fee payments. But in recent years operators have been directed to calculate fee payments based upon a Commission-prescribed formula that does not rely upon Form 325.⁵ Form 325 is not required for the annual regulatory fee process.

And fourth, it is suggested that Form 325 is used to assist, through the acquisition of system-specific frequency data, in the Commission's signal leakage and interference elimination program.⁶ But as the Commission notes, a significant portion of the information derived through Form 325 is available through Form 320. The Form 320 Basic Signal Leakage Performance Report provides information concerning the operational parameters of a cable system and the frequencies. Form 320 tracks interference that may occur to over-the-air services. The elimination of Form 325 will not disrupt the continued availability of data concerning cable system operational parameters submitted annually by all cable operators in Form 320.

⁴ Id. at 14.

⁵ See Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 17 FCC Rcd. 17161, 17195, n.35 (1997).

⁶ Notice at para.4.

B. Since 1994, the Commission Has Not Collected the Information Submitted on Form 325 and No Harm Has Resulted

The Commission states that the Form 325 filing requirement has not been enforced for several years. The agency explains that “As available Commission staff resources were reduced and priorities shifted, it became increasingly difficult to complete the data input process. Thus, the form has not been mailed out or data collected since 1994.”⁷

The Commission’s decision to defer the gathering of the information previously collected on Form 325 reflects a judgment that the agency’s resources are better spent elsewhere. Throughout the era of reduced federal oversight following the passage of the 1984 Cable Act, the Commission continued to require the filing of Form 325 by all cable operators. The operation of Form 325 was suspended in the midst of a period of heavy re-regulation of the cable industry that included the re-constitution of the Cable Service Bureau, a substantial expansion of staff devoted to oversight of cable activities, and significantly increased attention to federal cable policy issues. The inescapable conclusion is that Form 325 does not serve a purpose of sufficient importance to justify the continued expenditure of agency resources.

C. Critical Form 325 Information is Available From Private Sources

The Commission asks whether the information provided on Form 325 is available from commercial sources such as Warren Publishing and A.C. Nielsen. The clear implication of this inquiry is that the decision to eliminate Form 325 is potentially contingent upon the availability of the key information contained in the form through alternative sources. If the government, industry and consumers are able to obtain key information from private sources without Form 325, it follows one of the previously identified purposes of Form 325 will no longer exist.

⁷ Notice at para. 5.

The case for elimination of Form 325 is especially strong because the information previously collected on Form 325 is available through alternative sources. The Commission's heavy reliance on these alternatives in the Cable Competition Report and its ability to obtain information from the industry upon request, compellingly demonstrate that elimination of Form 325 will not result in any identifiable risks to the effectiveness of the agency's information gathering, regulatory oversight or enforcement processes.

1. A.C. Nielsen and Warren Publishing Have Been Collecting Cable-System Specific Data for Many Years

In 1966, and even in the 1970's, the Commission may have been legitimately concerned that Form 325 was a unique source of essential information about the cable industry. There may have been a reasonable perception that unless the Commission undertook the annual process of collecting the information through the Form 325 process, this information would not be available through alternative sources. This is no longer the case.

Warren Publishing ("Warren"), the publisher of the *TV Factbook*, has released an annual hard copy edition for decades. It contains much of the same information as is provided in Form 325. Warren also maintains an online data base that contains detailed, system-specific information updated on a continuing basis.⁸ Warren's *TV Factbook* and online data base, not the Commission's Form 325 data, is relied upon by businesses and researchers for system-specific information about the cable industry.

⁸ Warren claims in an advertising brochure that its customers may easily procure "the most up-to-date information available for all cable systems ..., sorted any way you like. Or if you prefer, you can use the computer to select that same up-to-date information for only those systems ... that meet your specified criteria for the particular project on which you're working. You can sort or screen the data by geographic region, ... system ... age, ownership or any other of the hundreds of fields of data we maintain for ... cable systems." Warren Publishing, Market Research & Data Sales Division, 1998.

For many years, A.C. Nielsen has also been collecting the most vital information required by Form 325. A.C Nielsen's Cable Online Data Exchange (CODE) is an effective vehicle for gathering system-specific data on each cable system in the United States. The CODE data base includes information on the age of each system, the number of miles of plant, the number of homes passed and basic subscribers, and the communities served. The CODE data base retains system-specific information on channel capacity, number of channels in use, channel line-up, tiers of service and pricing. The information is updated on a quarterly basis.

The detailed data collected by Nielsen enables companies to precisely target advertising pitches by geographic area. The Nielsen data also permits advertisers to identify and focus upon specific groups within geographic areas, based upon gender, age and other factors. Companies subscribing to Nielsen have no need for the information made available through the Form 325 data collection process.

2. The Commission's Need for Information Regarding the Cable Television Industry Can Be and Is Being Satisfied By Private Sources and Alternative Agency Processes

The FCC contends that it is "vital" for the agency to have "accurate and timely information regarding the cable television industry, both to assist in the enforcement of existing requirements and for broader rulemaking and policy purposes."⁹ The Commission also expresses concern that data available from private sources may not prove satisfactory because it is "not subject to accuracy and specificity requirements applicable to a government reporting system."¹⁰

⁹ Id. at para. 6.

¹⁰ Id.

There is compelling evidence, however, that the Commission is already effectively relying upon private sources. And, the Commission also relies upon alternative mechanisms, not Form 325, to obtain key information contained in Form 325.

The Commission may confidently rely upon the information gathering standards employed by the private sources that regularly track the cable industry. These financial and industry sources are the customers of the private tracking services. They have the experience and expertise to effectively review and analyze the reports submitted by these services. They are effectively positioned to insist upon satisfactory information quality standards.

The Commission relies upon the data collected by A.C. Nielsen and Warren Publishing. For example, the most recent Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming (“Cable Competition Report”)¹¹ depends significantly upon A.C. Nielsen and Warren to support the conclusions it reaches. This phenomenon is illustrated by Table B-4, “Channel Capacity for Subscribers: October 1995-October 1997”,¹² which reports data on the growth of cable system channel capacity. Rather than relying upon aggregate data from Form 325, the Commission included a table contained in reports of Warren Publishing. Similarly, the Commission relied in part for its data on relevant market positions of multichannel video distributors on Appendix E, “Assessment of Competing Technologies,” which included information provided by A.C. Nielsen and other sources.¹³

The Commission also relies upon information submitted by parties in response to the Notice issued in the Cable Competition Report proceeding. For example, NCTA’s *Cable*

¹¹ Fourth Annual Report, Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, FCC 97-423, rel. Jan. 13, 1998 (“Cable Competition Report”).

¹² Id., Table B-4.

Television Developments is the Commission's source for data on the aggregate number of program networks classified by type.¹⁴ More generally, the Commission regularly issues rulemakings and information requests when it identifies needs for additional data concerning the cable industry.¹⁵

II. IF CONTINUED, FORM 325 WILL IMPOSE A SIGNIFICANT BURDEN ON THE COMMISSION AND REGULATED ENTITIES

The Commission's decision to stop collecting Form 325 data after 1994 was totally understandable. After collecting the data every year for several decades, the agency found itself pressed by other regulatory responsibilities. At the same time, the benefits of the information collection process could be realized through alternative means. And, surely it must have been noted that once collected, it was not clear the information had served any purpose.

The Notice explains that prior to the suspension of the collection of Form 325 data, the Commission mailed the form annually to each of the nation's 11,000 cable systems. The Commission prior to 1994, in an effort to reduce the filing burden and to increase the accuracy of the information on file, had developed a process "whereby each year preprinted and completed forms were to be sent to each operator reflecting the information in the Commission's database."¹⁶ This process proved excessively burdensome to the Commission "because the returned forms, many of which were deficient in some manner, had to be manually reviewed for

¹³ Id., Appendix E.

¹⁴ 1994-1996: National Cable Television Association, *National Cable Video Networks By Type of Service: 1976-1996*, Cable Television Developments, Spring 1997, at 6, quoted in Cable Competition Report at Table B-5.

¹⁵ The Commission notes, moreover, that data filed on Form 325 to police interference is also produced through submission of the Form 320 Basic Signal Leakage Performance Report.

¹⁶ Notice at para. 5.

technical and administrative accuracy before being entered into the computer system.”¹⁷ The significant changes in systems throughout the cable industry made the Form 325 process particularly problematic. The Commission observed that as a result of changes in system design and operation approximately 40 per cent of the returned form exhibited some deficiency.

While the Commission focuses on the burden that Form 325 imposes upon the government, it should not lose sight of the costs that the process has imposed upon cable companies. Cable companies, large and small, devote considerable resources to comply with federal and local regulation of numerous aspects of their businesses. The person hours devoted to compliance with Form 325 could more effectively be devoted to other business requirements. This is particularly so because once collected, it is not clear that the information serves any purpose. The Commission should limit information collection requirements to specific purposes that serve identifiable needs. Otherwise, it will impose unnecessary burdens upon itself and those that it regulates. By formalizing its *de facto* decision to stop requiring cable operators to submit this information, the Commission will alleviate an unnecessary burden, while not posing any risk to the fulfillment of its regulatory responsibilities.

¹⁷ Id. (Citation omitted).

III. THE COMMISSION SHOULD ELIMINATE FORM 325, NOT REFORM IT

The Commission, in addition to proposing to eliminate Form 325, also seeks comment on changes to the form that should be made in the event it is retained “to clarify and improve the usefulness of the data collected.”¹⁸ The Commission suggests, for example, that there may be ways to obtain more reliable data relating to channel capacity, use and ownership. The Notice also asks whether there are certain “ways to make the collection process less burdensome.”¹⁹

For the reasons set forth above--principally the minimal benefit resulting from maintaining the form, the availability of information collected on the form through alternative sources and the burden imposed upon the Commission and filing parties--the Commission should not consider retaining Form 325 in a modified form. Instead, the Commission should promptly eliminate Form 325 from the regulations.

The Notice asks whether the rephrasing of questions and instructions relating to channel capacity and use in Form 325 would lead to more consistent responses. In general, it is always possible to improve upon questions and instructions in a form. In this case, however, the task of improving upon the data collection process should be left to private parties. Cable companies, private data collection services, advertisers and other relevant entities are continually involved in a process of testing and improving the data collection process. The Commission should rely upon the marketplace to maintain accuracy in data collection.

The compelling case for eliminating Form 325 means the Commission need not consider measures to make the process less burdensome. The continually updated private systems are far more useful to the Commission and to the private sector than government systems collecting

¹⁸ Id. at para.7.

¹⁹ Id. at para 8.

data annually or on a less frequent basis. The collection of data through sampling of only the largest systems will not provide the comprehensiveness and certainty that the Commission and private parties have come to expect.

Should the need arise, nothing prevents the Commission from supplementing the factual record in individual proceedings by propounding relevant data requests. Instead of maintaining Form 325, the Commission should, at most, limit its information gathering to carefully targeted requests.

CONCLUSION

For the foregoing reasons, the Commission should adopt its proposal to eliminate Form 325.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Brenner", written over a horizontal line.

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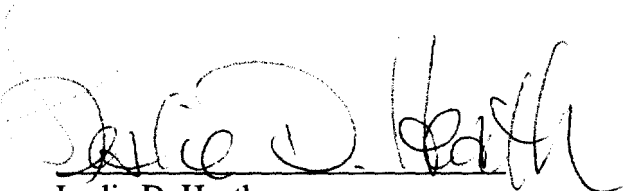
CERTIFICATE OF SERVICE

I, Leslie D. Heath, do hereby certify that copies of the foregoing COMMENTS were sent via first-class, postage prepaid, United States mail, this 30th day of June, 1998, to the following:

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